

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE NO. 2 FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 3

94TH GENERAL ASSEMBLY

2007

0580S.14T

AN ACT

To repeal sections 565.184, 630.005, 630.140, 630.165, 630.167, 630.725, and 630.755, RSMo, and to enact in lieu thereof nineteen new sections relating to mental health, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 565.184, 630.005, 630.140, 630.165, 630.167, 630.725, 2 and 630.755, RSMo, are repealed and nineteen new sections enacted in lieu 3 thereof, to be known as sections 565.184, 565.210, 565.212, 565.214, 565.216, 4 565.218, 565.220, 630.005, 630.127, 630.140, 630.163, 630.165, 630.167, 630.725, 5 630.755, 630.925, 630.927, 630.950, and 630.975, to read as follows:

565.184. 1. A person commits the crime of elder abuse in the third degree 2 if he:

3 (1) Knowingly causes or attempts to cause physical contact with any 4 person sixty years of age or older or an eligible adult as defined in section 5 660.250, RSMo, knowing the other person will regard the contact as harmful or 6 provocative; or

7 (2) Purposely engages in conduct involving more than one incident that 8 causes grave emotional distress to a person sixty years of age or older or an 9 eligible adult, as defined in section 660.250, RSMo. The course of conduct shall 10 be such as would cause a reasonable person age sixty years of age or older or an 11 eligible adult, as defined in section 660.250, RSMo, to suffer substantial

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

12 emotional distress; or

13 (3) Purposely or knowingly places a person sixty years of age or older or
14 an eligible adult, as defined in section 660.250, RSMo, in apprehension of
15 immediate physical injury; or

16 (4) Intentionally fails to provide care, goods or services to a person sixty
17 years of age or older or an eligible adult, as defined in section 660.250,
18 RSMo. The [cause] **result** of the conduct shall be such as would cause a
19 reasonable person age sixty or older or an eligible adult, as defined in section
20 660.250, RSMo, to suffer physical or emotional distress; or

21 (5) Knowingly acts or knowingly fails to act in a manner which results in
22 a grave risk to the life, body or health of a person sixty years of age or older or
23 an eligible adult, as defined in section 660.250, RSMo.

24 2. Elder abuse in the third degree is a class A misdemeanor.

**565.210. 1. A person commits the crime of vulnerable person
2 abuse in the first degree if he or she attempts to kill or knowingly
3 causes or attempts to cause serious physical injury to, a vulnerable
4 person, as defined in section 630.005, RSMo.**

5 2. Vulnerable person abuse in the first degree is a class A felony.

**565.212. 1. A person commits the crime of vulnerable person
2 abuse in the second degree if he or she:**

**3 (1) Knowingly causes or attempts to cause physical injury to a
4 vulnerable person, as defined in section 630.005, RSMo, by means of a
5 deadly weapon or dangerous instrument; or**

**6 (2) Recklessly causes serious physical injury to any vulnerable
7 person, as defined in section 630.005, RSMo.**

**8 2. Vulnerable person abuse in the second degree is a class B
9 felony.**

**565.214. 1. A person commits the crime of vulnerable person
2 abuse in the third degree if he or she:**

**3 (1) Knowingly causes or attempts to cause physical contact with
4 any vulnerable person as defined in section 630.005, RSMo, knowing the
5 other person will regard the contact as harmful or offensive; or**

**6 (2) Purposely engages in conduct involving more than one
7 incident that causes grave emotional distress to a vulnerable person,
8 as defined in section 630.005, RSMo. The result of the conduct shall be
9 such as would cause a vulnerable person, as defined in section 630.005,
10 RSMo, to suffer substantial emotional distress; or**

11 (3) Purposely or knowingly places a vulnerable person, as
12 defined in section 630.005, RSMo, in apprehension of immediate
13 physical injury; or

14 (4) Intentionally fails to provide care, goods or services to a
15 vulnerable person, as defined in section 630.005, RSMo. The result of
16 the conduct shall be such as would cause a vulnerable person, as
17 defined in section 630.005, RSMo, to suffer physical or emotional
18 distress; or

19 (5) Knowingly acts or knowingly fails to act with malice in a
20 manner that results in a grave risk to the life, body or health of a
21 vulnerable person, as defined in section 630.005, RSMo; or

22 (6) Is a person who is a vendor, provider, agent, or employee of
23 a department operated, funded, licensed, or certified program and
24 engages in sexual contact, as defined by subdivision (3) of section
25 566.010, RSMo, or sexual intercourse, as defined by subdivision (4) of
26 section 566.010, RSMo, with a vulnerable person.

27 2. Vulnerable person abuse in the third degree is a class A
28 misdemeanor.

29 3. Actions done in good faith and without gross negligence that
30 are designed to protect the safety of the individual and the safety of
31 others, or are provided within accepted standards of care and
32 treatment, shall not be considered as abuse of a vulnerable person as
33 defined in this section.

34 4. Nothing in this section shall be construed to mean that a
35 vulnerable person is abused solely because such person chooses to rely
36 on spiritual means through prayer, in lieu of medical care, for his or
37 her health care, as evidenced by the vulnerable person's explicit
38 consent, advance directive for health care, or practice.

 565.216. The department of mental health shall investigate
2 incidents and reports of vulnerable person abuse using the procedures
3 established in sections 630.163 to 630.167, RSMo, and, upon
4 substantiation of the report of vulnerable person abuse, shall promptly
5 report the incident to the appropriate law enforcement agency and
6 prosecutor. If the department is unable to substantiate whether abuse
7 occurred due to the failure of the operator or any of the operator's
8 agents or employees to cooperate with the investigation, the incident
9 shall be promptly reported to appropriate law enforcement agencies.

565.218. 1. When any physician, physician assistant, dentist,
2 chiropractor, optometrist, podiatrist, intern, resident, nurse, nurse
3 practitioner, medical examiner, social worker, licensed professional
4 counselor, certified substance abuse counselor, psychologist, physical
5 therapist, pharmacist, other health practitioner, minister, Christian
6 Science practitioner, facility administrator, nurse's aide or orderly in
7 a residential facility, day program or specialized service operated,
8 funded or licensed by the department or in a mental health facility or
9 mental health program in which people may be admitted on a voluntary
10 basis or are civilly detained pursuant to chapter 632, RSMo; or
11 employee of the departments of social services, mental health, or health
12 and senior services; or home health agency or home health agency
13 employee; hospital and clinic personnel engaged in examination, care,
14 or treatment of persons; in-home services owner, provider, operator, or
15 employee; law enforcement officer; long-term care facility
16 administrator or employee; mental health professional; peace officer;
17 probation or parole officer; or other nonfamilial person with
18 responsibility for the care of a vulnerable person, as defined by section
19 630.005, RSMo, has reasonable cause to suspect that such a person has
20 been subjected to abuse or neglect or observes such a person being
21 subjected to conditions or circumstances that would reasonably result
22 in abuse or neglect, he or she shall immediately report or cause a
23 report to be made to the department in accordance with section
24 630.163, RSMo. Any other person who becomes aware of circumstances
25 which may reasonably be expected to be the result of or result in abuse
26 or neglect may report to the department. Notwithstanding any other
27 provision of this section, a duly ordained minister, clergy, religious
28 worker, or Christian Science practitioner while functioning in his or
29 her ministerial capacity shall not be required to report concerning a
30 privileged communication made to him or her in his or her professional
31 capacity.

32 2. Any person who knowingly fails to make a report as required
33 in subsection 1 of this section is guilty of a class A misdemeanor and
34 shall be subject to a fine up to one thousand dollars. Penalties
35 collected for violations of this section shall be transferred to the state
36 school moneys fund as established in section 166.051, RSMo, and
37 distributed to the public schools of this state in the manner provided

38 in section 163.031, RSMo. Such penalties shall not be considered
39 charitable for tax purposes.

40 3. Every person who has been previously convicted of or pled
41 guilty to failing to make a report as required in subsection 1 of this
42 section and who is subsequently convicted of failing to make a report
43 under subsection 2 of this section is guilty of a class D felony and shall
44 be subject to a fine up to five thousand dollars. Penalties collected for
45 violation of this subsection shall be transferred to the state school
46 moneys fund as established in section 166.051, RSMo, and distributed
47 to the public schools of this state in the manner provided in section
48 163.031, RSMo. Such penalties shall not be considered charitable for
49 tax purposes.

50 4. Any person who knowingly files a false report of vulnerable
51 person abuse or neglect is guilty of a class A misdemeanor and shall be
52 subject to a fine up to one thousand dollars. Penalties collected for
53 violations of this subsection shall be transferred to the state school
54 moneys fund as established in section 166.051, RSMo, and distributed
55 to the public schools of this state in the manner provided in section
56 163.031, RSMo. Such penalties shall not be considered charitable for
57 tax purposes.

58 5. Every person who has been previously convicted of or pled
59 guilty to making a false report to the department and who is
60 subsequently convicted of making a false report under subsection 4 of
61 this section is guilty of a class D felony and shall be subject to a fine up
62 to five thousand dollars. Penalties collected for violations of this
63 subsection shall be transferred to the state school moneys fund as
64 established in section 166.051, RSMo, and distributed to the public
65 schools of this state in the manner provided in section 163.031,
66 RSMo. Such penalties shall not considered charitable for tax purposes.

67 6. Evidence of prior convictions of false reporting shall be heard
68 by the court, out of the hearing of the jury, prior to the submission of
69 the case to the jury, and the court shall determine the existence of the
70 prior convictions.

71 7. Any residential facility, day program or specialized service
72 operated, funded or licensed by the department that prevents or
73 discourages a patient, resident or client, employee or other person from
74 reporting that a patient, resident or client of a facility, program or

75 service has been abused or neglected shall be subject to loss of their
76 license issued pursuant to sections 630.705 to 630.760, and civil fines of
77 up to five thousand dollars for each attempt to prevent or discourage
78 reporting.

565.220. Any person, official or institution complying with the
2 provisions of section 565.218, in the making of a report, or in
3 cooperating with the department in any of its activities pursuant to
4 sections 565.216 and 565.218, except any person, official, or institution
5 violating section 565.210, 565.212, or 565.214 shall be immune from any
6 civil or criminal liability for making such a report, or in cooperating
7 with the department, unless such person acted negligently, recklessly,
8 in bad faith, or with malicious purpose.

630.005. As used in this chapter and chapters 631, 632, and 633, RSMo,
2 unless the context clearly requires otherwise, the following terms shall mean:

3 (1) "Administrative entity", a provider of specialized services other than
4 transportation to clients of the department on behalf of a division of the
5 department;

6 (2) "Alcohol abuse", the use of any alcoholic beverage, which use results
7 in intoxication or in a psychological or physiological dependency from continued
8 use, which dependency induces a mental, emotional or physical impairment and
9 which causes socially dysfunctional behavior;

10 (3) "Chemical restraint", medication administered with the primary intent
11 of restraining a patient who presents a likelihood of serious physical injury to
12 himself or others, and not prescribed to treat a person's medical condition;

13 (4) "Client", any person who is placed by the department in a facility or
14 program licensed and funded by the department or who is a recipient of services
15 from a regional center, as defined in section 633.005, RSMo;

16 (5) "Commission", the state mental health commission;

17 (6) "Consumer", a person:

18 (a) Who qualifies to receive department services; or

19 (b) Who is a parent, child or sibling of a person who receives department
20 services; or

21 (c) Who has a personal interest in services provided by the department.
22 A person who provides services to persons affected by mental retardation,
23 developmental disabilities, mental disorders, mental illness, or alcohol or drug
24 abuse shall not be considered a consumer;

25 (7) "Day program", a place conducted or maintained by any person who

26 advertises or holds himself out as providing prevention, evaluation, treatment,
27 habilitation or rehabilitation for persons affected by mental disorders, mental
28 illness, mental retardation, developmental disabilities or alcohol or drug abuse
29 for less than the full twenty-four hours comprising each daily period;

30 (8) "Department", the department of mental health of the state of
31 Missouri;

32 (9) "Developmental disability", a disability:

33 (a) Which is attributable to:

34 a. Mental retardation, cerebral palsy, epilepsy, head injury or autism, or
35 a learning disability related to a brain dysfunction; or

36 b. Any other mental or physical impairment or combination of mental or
37 physical impairments; and

38 (b) Is manifested before the person attains age twenty-two; and

39 (c) Is likely to continue indefinitely; and

40 (d) Results in substantial functional limitations in two or more of the
41 following areas of major life activities:

42 a. Self-care;

43 b. Receptive and expressive language development and use;

44 c. Learning;

45 d. Self-direction;

46 e. Capacity for independent living or economic self-sufficiency;

47 f. Mobility; and

48 (e) Reflects the person's need for a combination and sequence of special,
49 interdisciplinary, or generic care, habilitation or other services which may be of
50 lifelong or extended duration and are individually planned and coordinated;

51 (10) "Director", the director of the department of mental health, or his
52 designee;

53 (11) "Domiciled in Missouri", a permanent connection between an
54 individual and the state of Missouri, which is more than mere residence in the
55 state; it may be established by the individual being physically present in Missouri
56 with the intention to abandon his previous domicile and to remain in Missouri
57 permanently or indefinitely;

58 (12) "Drug abuse", the use of any drug without compelling medical reason,
59 which use results in a temporary mental, emotional or physical impairment and
60 causes socially dysfunctional behavior, or in psychological or physiological
61 dependency resulting from continued use, which dependency induces a mental,
62 emotional or physical impairment and causes socially dysfunctional behavior;

63 (13) "Habilitation", a process of treatment, training, care or specialized
64 attention which seeks to enhance and maximize the mentally retarded or
65 developmentally disabled person's abilities to cope with the environment and to
66 live as normally as possible;

67 (14) "Habilitation center", a residential facility operated by the
68 department and serving only persons who are mentally retarded, including
69 developmentally disabled;

70 (15) "Head of the facility", the chief administrative officer, or his designee,
71 of any residential facility;

72 (16) "Head of the program", the chief administrative officer, or his
73 designee, of any day program;

74 (17) "Individualized habilitation plan", a document which sets forth
75 habilitation goals and objectives for mentally retarded or developmentally
76 disabled residents and clients, and which details the habilitation program as
77 required by law, rules and funding sources;

78 (18) "Individualized rehabilitation plan", a document which sets forth the
79 care, treatment and rehabilitation goals and objectives for patients and clients
80 affected by alcohol or drug abuse, and which details the rehabilitation program
81 as required by law, rules and funding sources;

82 (19) "Individualized treatment plan", a document which sets forth the
83 care, treatment and rehabilitation goals and objectives for mentally disordered
84 or mentally ill patients and clients, and which details the treatment program as
85 required by law, rules and funding sources;

86 (20) "Investigator", an employee or contract agent of the department of
87 mental health who is performing an investigation regarding an allegation of
88 abuse or neglect or an investigation at the request of the director of the
89 department of mental health or his designee;

90 (21) "Least restrictive environment", a reasonably available setting or
91 mental health program where care, treatment, habilitation or rehabilitation is
92 particularly suited to the level and quality of services necessary to implement a
93 person's individualized treatment, habilitation or rehabilitation plan and to
94 enable the person to maximize his functioning potential to participate as freely
95 as feasible in normal living activities, giving due consideration to potentially
96 harmful effects on the person and the safety of other facility or program clients
97 and public safety. For some mentally disordered or mentally retarded persons,
98 the least restrictive environment may be a facility operated by the department,
99 a private facility, a supported community living situation, or an alternative

100 community program designed for persons who are civilly detained for outpatient
101 treatment or who are conditionally released pursuant to chapter 632, RSMo;

102 (22) "Mental disorder", any organic, mental or emotional impairment
103 which has substantial adverse effects on a person's cognitive, volitional or
104 emotional function and which constitutes a substantial impairment in a person's
105 ability to participate in activities of normal living;

106 (23) "Mental illness", a state of impaired mental processes, which
107 impairment results in a distortion of a person's capacity to recognize reality due
108 to hallucinations, delusions, faulty perceptions or alterations of mood, and
109 interferes with an individual's ability to reason, understand or exercise conscious
110 control over his actions. The term "mental illness" does not include the following
111 conditions unless they are accompanied by a mental illness as otherwise defined
112 in this subdivision:

113 (a) Mental retardation, developmental disability or narcolepsy;

114 (b) Simple intoxication caused by substances such as alcohol or drugs;

115 (c) Dependence upon or addiction to any substances such as alcohol or
116 drugs;

117 (d) Any other disorders such as senility, which are not of an actively
118 psychotic nature;

119 (24) "Mental retardation", significantly subaverage general intellectual
120 functioning which:

121 (a) Originates before age eighteen; and

122 (b) Is associated with a significant impairment in adaptive behavior;

123 (25) "Minor", any person under the age of eighteen years;

124 (26) "Patient", an individual under observation, care, treatment or
125 rehabilitation by any hospital or other mental health facility or mental health
126 program pursuant to the provisions of chapter 632, RSMo;

127 (27) "Psychosurgery",

128 (a) Surgery on the normal brain tissue of an individual not suffering from
129 physical disease for the purpose of changing or controlling behavior; or

130 (b) Surgery on diseased brain tissue of an individual if the sole object of
131 the surgery is to control, change or affect behavioral disturbances, except seizure
132 disorders;

133 (28) "Rehabilitation", a process of restoration of a person's ability to attain
134 or maintain normal or optimum health or constructive activity through care,
135 treatment, training, counseling or specialized attention;

136 (29) "Residence", the place where the patient has last generally lodged

137 prior to admission or, in case of a minor, where his family has so lodged; except,
138 that admission or detention in any facility of the department shall not be deemed
139 an absence from the place of residence and shall not constitute a change in
140 residence;

141 (30) "Resident", a person receiving residential services from a facility,
142 other than mental health facility, operated, funded or licensed by the department;

143 (31) "Residential facility", any premises where residential prevention,
144 evaluation, care, treatment, habilitation or rehabilitation is provided for persons
145 affected by mental disorders, mental illness, mental retardation, developmental
146 disabilities or alcohol or drug abuse; except the person's dwelling;

147 (32) "Specialized service", an entity which provides prevention, evaluation,
148 transportation, care, treatment, habilitation or rehabilitation services to persons
149 affected by mental disorders, mental illness, mental retardation, developmental
150 disabilities or alcohol or drug abuse;

151 (33) "Vendor", a person or entity under contract with the department,
152 other than as a department employee, who provides services to patients, residents
153 or clients;

154 (34) "Vulnerable person", any person in the custody, care, or
155 control of the department that is receiving services from an operated,
156 funded, licensed, or certified program.

630.127. 1. The department of mental health shall develop rules,
2 guidelines, and protocols for an initial notification to a parent or
3 guardian of a patient, resident, or client when first entering the care
4 and custody of the department, or when first entering a facility
5 licensed, certified, or funded by the department. Such notification
6 shall notify the parent or guardian, or a consumer who is his or her
7 own guardian, of the possibility of a person being placed in the facility
8 with the patient, resident, or client, who falls in one of the following
9 categories:

10 (1) Individuals who are required to register as a sexual offender,
11 under sections 589.400 to 589.425, RSMo; or

12 (2) Individuals who have been determined to lack capacity to
13 understand the proceedings against him or her or to assist in his or her
14 own defense under section 552.020, RSMo, for offenses the person would
15 have otherwise been required to register as a sexual offender under
16 sections 589.400 to 589.425, RSMo.

17 2. Such rules, guidelines and protocols developed under

18 subsection 1 of this section shall include the process and mechanisms
19 for assessing risk, for planning and providing care and safety, and for
20 the provision of services and supports necessary to mitigate risk for
21 persons residing in a state facility or facility licensed, certified, or
22 funded by the department. Such protocols shall also provide a
23 mechanism for the parent or guardian, or the consumer who is his or
24 her own guardian, to raise any concerns and to seek consultation about
25 the placement.

26 3. The department of mental health shall develop rules,
27 guidelines, and protocols for notifying a parent or guardian of a
28 patient, resident, or client, or a consumer who is his or her own
29 guardian, residing in a state facility or facility licensed, certified, or
30 funded by the department, that a person required to register as a
31 sexual offender under sections 589.400 to 589.425, RSMo, is residing in
32 or has been placed in the same state facility, or facility licensed,
33 certified, or funded by the department as the patient, resident, or
34 client. Such protocols shall provide a mechanism for the parent or
35 guardian, or the consumer who is his or her own guardian, to raise any
36 concerns and to seek consultation prior to placement of the person
37 required to register as a sexual offender.

38 4. The department of mental health shall develop rules,
39 guidelines, and protocols to obtain consent from the parent or guardian
40 of a patient, resident, or client, or a consumer who is his or her own
41 guardian and who falls under the category in subdivision (2) of
42 subsection 1 of this section to disclose his or her name and criminal
43 charges to other parents or guardians of a patient, resident, or client,
44 or to a consumer who is his or her own guardian residing in the same
45 facility. Such request for disclosure shall inform all parties of the steps
46 to be taken in the event consent to disclose is given or denied. Refusal
47 to grant consent under this subsection by a parent or guardian of a
48 patient, resident, or client, or a consumer who is his or her own
49 guardian, of a facility licensed, certified, or funded by the department,
50 shall not prevent placement.

51 5. Any rule or portion of a rule, as that term is defined in section
52 536.010, RSMo, that is created under the authority delegated in this
53 section shall become effective only if it complies with and is subject to
54 all of the provisions of chapter 536, RSMo, and, if applicable, section

55 536.028, RSMo.

630.140. 1. Information and records compiled, obtained, prepared or
2 maintained by the residential facility, day program operated, funded or licensed
3 by the department or otherwise, specialized service, or by any mental health
4 facility or mental health program in which people may be civilly detained
5 pursuant to chapter 632, RSMo, in the course of providing services to either
6 voluntary or involuntary patients, residents or clients shall be confidential.

7 2. The facilities or programs shall disclose information and records
8 including medication given, dosage levels, and individual ordering such
9 medication to the following upon their request:

10 (1) The parent of a minor patient, resident or client;

11 (2) The guardian or other person having legal custody of the patient,
12 resident or client;

13 (3) The attorney of a patient, resident or client who is a ward of the
14 juvenile court, an alleged incompetent, an incompetent ward or a person detained
15 under chapter 632, RSMo, as evidenced by court orders of the attorney's
16 appointment;

17 (4) An attorney or personal physician as authorized by the patient,
18 resident or client;

19 (5) Law enforcement officers and agencies, information about patients,
20 residents or clients committed pursuant to chapter 552, RSMo, but only to the
21 extent necessary to carry out the responsibilities of their office, and all such law
22 enforcement officers shall be obligated to keep such information confidential;

23 (6) The entity or agency authorized to implement a system to protect and
24 advocate the rights of persons with developmental disabilities under the
25 provisions of 42 U.S.C. Sections 15042 to 15044. The entity or agency shall be
26 able to obtain access to the records of a person with developmental disabilities
27 who is a client of the entity or agency if such person has authorized the entity or
28 agency to have such access; and the records of any person with developmental
29 disabilities who, by reason of mental or physical condition is unable to authorize
30 the entity or agency to have such access, if such person does not have a legal
31 guardian, conservator or other legal representative, and a complaint has been
32 received by the entity or agency with respect to such person or there is probable
33 cause to believe that such person has been subject to abuse or neglect. The entity
34 or agency obtaining access to a person's records shall meet all requirements for
35 confidentiality as set out in this section;

36 (7) The entity or agency authorized to implement a system to protect and

37 advocate the rights of persons with mental illness under the provisions of 42
38 U.S.C. 10801 shall be able to obtain access to the records of a patient, resident
39 or client who by reason of mental or physical condition is unable to authorize the
40 system to have such access, who does not have a legal guardian, conservator or
41 other legal representative and with respect to whom a complaint has been
42 received by the system or there is probable cause to believe that such individual
43 has been subject to abuse or neglect. The entity or agency obtaining access to a
44 person's records shall meet all requirements for confidentiality as set out in this
45 section. The provisions of this subdivision shall apply to a person who has a
46 significant mental illness or impairment as determined by a mental health
47 professional qualified under the laws and regulations of the state;

48 (8) To mental health coordinators, but only to the extent necessary to
49 carry out their duties under chapter 632, RSMo.

50 3. The facilities or services may disclose information and records under
51 any of the following:

52 (1) As authorized by the patient, resident or client;

53 (2) To persons or agencies responsible for providing health care services
54 to such patients, residents or clients;

55 (3) To the extent necessary for a recipient to make a claim or for a claim
56 to be made on behalf of a recipient for aid or insurance;

57 (4) To qualified personnel for the purpose of conducting scientific
58 research, management audits, financial audits, program evaluations or similar
59 studies; provided, that such personnel shall not identify, directly or indirectly,
60 any individual patient, resident or client in any report of such research, audit or
61 evaluation, or otherwise disclose patient, resident or client identities in any
62 manner;

63 (5) To the courts as necessary for the administration of chapter 211,
64 RSMo, 475, RSMo, 552, RSMo, or 632, RSMo;

65 (6) To law enforcement officers or public health officers, but only to the
66 extent necessary to carry out the responsibilities of their office, and all such law
67 enforcement and public health officers shall be obligated to keep such information
68 confidential;

69 (7) Pursuant to an order of a court or administrative agency of competent
70 jurisdiction;

71 (8) To the attorney representing petitioners, but only to the extent
72 necessary to carry out their duties under chapter 632, RSMo;

73 (9) To the department of social services or the department of health and

74 senior services as necessary to report or have investigated abuse, neglect, or
75 rights violations of patients, residents, or clients;

76 (10) To a county board established pursuant to sections 205.968 to
77 205.972, RSMo 1986, but only to the extent necessary to carry out their statutory
78 responsibilities. The county board shall not identify, directly or indirectly, any
79 individual patient, resident or client;

80 (11) To parents, legal guardians, treatment professionals, law enforcement
81 officers, and other individuals who by having such information could mitigate the
82 likelihood of a suicide. The facility treatment team shall have determined that
83 the consumer's safety is at some level of risk.

84 4. The facility or program shall document the dates, nature, purposes and
85 recipients of any records disclosed under this section and sections 630.145 and
86 630.150.

87 5. The records and files maintained in any court proceeding under chapter
88 632, RSMo, shall be confidential and available only to the patient, the patient's
89 attorney, guardian, or, in the case of a minor, to a parent or other person having
90 legal custody of the patient, and to the petitioner and the petitioner's attorney,
91 **and to the Missouri state highway patrol for reporting to the National**
92 **Instant Criminal Background Check System (NICS).** In addition, the court
93 may order the release or use of such records or files only upon good cause shown,
94 and the court may impose such restrictions as the court deems appropriate.

95 6. Nothing contained in this chapter shall limit the rights of discovery in
96 judicial or administrative procedures as otherwise provided for by statute or rule.

97 7. The fact of admission of a voluntary or involuntary patient to a mental
98 health facility under chapter 632, RSMo, may only be disclosed as specified in
99 subsections 2 and 3 of this section.

630.163. 1. Any person having reasonable cause to suspect that
2 **a vulnerable person presents a likelihood of suffering serious physical**
3 **harm or is the victim of abuse or neglect shall report such information**
4 **to the department. Reports of vulnerable person abuse received by the**
5 **departments of health and senior services and social services shall be**
6 **forwarded to the department.**

7 **2. The report shall be made orally or in writing. It shall include,**
8 **if known:**

9 **(1) The name, age, and address of the vulnerable person;**

10 **(2) The name and address of any person responsible for the**
11 **vulnerable person's care;**

12 **(3) The nature and extent of the vulnerable person's condition;**
13 **and**

14 **(4) Other relevant information.**

15 **3. The department shall have primary responsibility for**
16 **investigating reported incidents of abuse and neglect of vulnerable**
17 **persons.**

18 **4. Reports regarding persons determined not to be vulnerable**
19 **persons as defined in section 630.005 shall be referred to the**
20 **appropriate state or local authorities.**

21 **5. The department shall collaborate with the departments of**
22 **health and senior services and social services to maintain a statewide**
23 **toll free phone number for receipt of reports.**

 630.165. 1. When any physician, **physician assistant**, dentist,
2 **chiropractor**, optometrist, podiatrist, intern, **resident**, nurse, **nurse**
3 **practitioner**, medical examiner, social worker, **licensed professional**
4 **counselor, certified substance abuse counselor**, psychologist, **other health**
5 **practitioner**, minister, Christian Science practitioner, peace officer, pharmacist,
6 physical therapist, facility administrator, nurse's aide or orderly in a residential
7 facility, day program or specialized service operated, funded or licensed by the
8 department or in a mental health facility or mental health program in which
9 people may be admitted on a voluntary basis or are civilly detained pursuant to
10 chapter 632, RSMo, or employee of the [department] **departments of social**
11 **services, mental health, or health and senior services; or home health**
12 **agency or home health agency employee; hospital and clinic personnel**
13 **engaged in examination, care, or treatment of persons; in-home services**
14 **owner, provider, operator, or employee; law enforcement officer, long-**
15 **term care facility administrator or employee; mental health**
16 **professional, probation or parole officer, or other nonfamilial person**
17 **with responsibility for the care of a patient, resident, or client of a**
18 **facility, program, or service** has reasonable cause to [believe] **suspect** that
19 a patient, resident or client of a facility, program or service has been [abused or
20 neglected, he or she shall immediately report or cause a report to be made to the
21 department or the department of health and senior services, if such facility or
22 program is licensed pursuant to chapter 197, RSMo] **subjected to abuse or**
23 **neglect or observes such person being subjected to conditions or**
24 **circumstances that would reasonably result in abuse or neglect, he or**
25 **she shall immediately report or cause a report to be made to the**

26 **department in accordance with section 630.163.**

27 2. [The report shall contain the name and address of the residential
28 facility, day program or specialized service; the name of the patient, resident or
29 client; information regarding the nature of the abuse or neglect; the name of the
30 complainant, and any other information which might be helpful in an
31 investigation] **Any person who knowingly fails to make a report as**
32 **required in subsection 1 of this section is guilty of a class A**
33 **misdemeanor and shall be subject to a fine up to one thousand**
34 **dollars. Penalties collected for violations of this section shall be**
35 **transferred to the state school moneys fund as established in section**
36 **166.051, RSMo, and distributed to the public schools of this state in the**
37 **manner provided in section 163.031, RSMo. Such penalties shall not**
38 **considered charitable for tax purposes.**

39 3. [Any person required in subsection 1 of this section to report or cause
40 a report to be made to the department who fails to do so within a reasonable time
41 after the act of abuse or neglect is guilty of an infraction] **Every person who**
42 **has been previously convicted of or pled guilty to failing to make a**
43 **report as required in subsection 1 of this section and who is**
44 **subsequently convicted of failing to make a report under subsection 2**
45 **of this section is guilty of a class D felony and shall be subject to a fine**
46 **up to five thousand dollars. Penalties collected for violation of this**
47 **subsection shall be transferred to the state school moneys fund as**
48 **established in section 166.051, RSMo, and distributed to the public**
49 **schools of this state in the manner provided in section 163.031,**
50 **RSMo. Such penalties shall not considered charitable for tax purposes.**

51 4. [In addition to those persons required to report under subsection 1 of
52 this section, any other person having reasonable cause to believe that a resident
53 has been abused or neglected may report such information to the department]
54 **Any person who knowingly files a false report of vulnerable person**
55 **abuse or neglect is guilty of a class A misdemeanor and shall be subject**
56 **to a fine up to one thousand dollars. Penalties collected for violations**
57 **of this subsection shall be transferred to the state school moneys fund**
58 **as established in section 166.051, RSMo, and distributed to the public**
59 **schools of this state in the manner provided in section 163.031,**
60 **RSMo. Such penalties shall not considered charitable for tax purposes.**

61 5. [Any person who knowingly files a false report of abuse or neglect is
62 guilty of a class A misdemeanor] **Every person who has been previously**

63 convicted of or pled guilty to making a false report to the department
64 and who is subsequently convicted of making a false report under
65 subsection 4 of this section is guilty of a class D felony and shall be
66 subject to a fine up to five thousand dollars. Penalties collected for
67 violations of this subsection shall be transferred to the state school
68 moneys fund as established in section 166.051, RSMo, and distributed
69 to the public schools of this state in the manner provided in section
70 163.031, RSMo. Such penalties shall not considered charitable for tax
71 purposes.

72 6. [Any person having a prior conviction of filing false reports and who
73 subsequently files a false report of abuse or neglect pursuant to this section or
74 section 565.188, RSMo, is guilty of a class D felony] Evidence of prior
75 convictions of false reporting shall be heard by the court, out of the
76 hearing of the jury, prior to the submission of the case to the jury, and
77 the court shall determine the existence of the prior convictions.

78 7. Any residential facility, day program, or specialized service
79 operated, funded, or licensed by the department that prevents or
80 discourages a patient, resident, or client, employee, or other person
81 from reporting that a patient, resident, or client of a facility, program,
82 or service has been abused or neglected shall be subject to loss of their
83 license issued pursuant to sections 630.705 to 630.760 and civil fines of
84 up to five thousand dollars for each attempt to prevent or discourage
85 reporting.

630.167. 1. Upon receipt of a report, the department or its agents,
2 contractors or vendors or the department of health and senior services, if such
3 facility or program is licensed pursuant to chapter 197, RSMo, shall initiate an
4 investigation within twenty-four hours.

5 2. If the investigation indicates possible abuse or neglect of a patient,
6 resident or client, the investigator shall refer the complaint together with the
7 investigator's report to the department director for appropriate action. If, during
8 the investigation or at its completion, the department has reasonable cause to
9 believe that immediate removal from a facility not operated or funded by the
10 department is necessary to protect the residents from abuse or neglect, the
11 department or the local prosecuting attorney may, or the attorney general upon
12 request of the department shall, file a petition for temporary care and protection
13 of the residents in a circuit court of competent jurisdiction. The circuit court in
14 which the petition is filed shall have equitable jurisdiction to issue an ex parte

15 order granting the department authority for the temporary care and protection
16 of the resident for a period not to exceed thirty days.

17 3. (1) **Except as otherwise provided in this section**, reports referred
18 to in section 630.165 and the investigative reports referred to in this section shall
19 be confidential, shall not be deemed a public record, and shall not be subject to
20 the provisions of section 109.180, RSMo, or chapter 610, RSMo[; except that
21 complete copies of all such reports shall be open and available]. **Investigative**
22 **reports pertaining to abuse and neglect shall remain confidential until**
23 **a final report is complete, subject to the conditions contained in this**
24 **section. Final reports of substantiated abuse or neglect issued on or**
25 **after the effective date of this section are open and shall be available**
26 **for release in accordance with chapter 610, RSMo. The names and all**
27 **other identifying information in such final substantiated reports,**
28 **including diagnosis and treatment information about the patient,**
29 **resident, or client who is the subject of such report, shall be**
30 **confidential and may only be released to the patient, resident, or client**
31 **who has not been adjudged incapacitated under chapter 475, RSMo, the**
32 **custodial parent or guardian parent, or other guardian of the patient,**
33 **resident or client. The names and other descriptive information of the**
34 **complainant, witnesses, or other persons for whom findings are not**
35 **made against in the final substantiated report shall be confidential and**
36 **not deemed a public record. Final reports of unsubstantiated**
37 **allegations of abuse and neglect shall remain closed records and shall**
38 **only be released to the parents or other guardian of the patient, resident, or**
39 **client who is the subject of such report, patient, resident, or client and the**
40 **department vendor, provider, agent, or facility where the patient,**
41 **resident, or client was receiving department services at the time of the**
42 **unsubstantiated allegations of abuse and neglect, but the names and any**
43 **other descriptive information of the complainant or any other person mentioned**
44 **in the reports shall not be disclosed unless such complainant or person**
45 **specifically consents to such disclosure. Requests for final reports of**
46 **substantiated or unsubstantiated abuse or neglect from a patient,**
47 **resident or client who has not been adjudged incapacitated under**
48 **chapter 475, RSMo, may be denied or withheld if the director of the**
49 **department or his or her designee determines that such release would**
50 **jeopardize the person's therapeutic care, treatment, habilitation, or**
51 **rehabilitation, or the safety of others and provided that the reasons for**

52 **such denial or withholding are submitted in writing to the patient,**
53 **resident or client who has not been adjudged incapacitated under**
54 **chapter 475, RSMo.** All reports referred to in this section shall be admissible
55 in any judicial proceedings or hearing in accordance with section 36.390, RSMo,
56 or any administrative hearing before the director of the department of mental
57 health, or the director's designee. All such reports may be disclosed by the
58 department of mental health to law enforcement officers and public health
59 officers, but only to the extent necessary to carry out the responsibilities of their
60 offices, and to the department of social services, and the department of health and
61 senior services, and to boards appointed pursuant to sections 205.968 to 205.990,
62 RSMo, that are providing services to the patient, resident or client as necessary
63 to report or have investigated abuse, neglect, or rights violations of patients,
64 residents or clients provided that all such law enforcement officers, public health
65 officers, department of social services' officers, department of health and senior
66 services' officers, and boards shall be obligated to keep such information
67 confidential;

68 (2) Except as otherwise provided in this section, the proceedings, findings,
69 deliberations, reports and minutes of committees of health care professionals as
70 defined in section 537.035, RSMo, or mental health professionals as defined in
71 section 632.005, RSMo, who have the responsibility to evaluate, maintain, or
72 monitor the quality and utilization of mental health services are privileged and
73 shall not be subject to the discovery, subpoena or other means of legal compulsion
74 for their release to any person or entity or be admissible into evidence into any
75 judicial or administrative action for failure to provide adequate or appropriate
76 care. Such committees may exist, either within department facilities or its
77 agents, contractors, or vendors, as applicable. Except as otherwise provided in
78 this section, no person who was in attendance at any investigation or committee
79 proceeding shall be permitted or required to disclose any information acquired in
80 connection with or in the course of such proceeding or to disclose any opinion,
81 recommendation or evaluation of the committee or board or any member thereof;
82 provided, however, that information otherwise discoverable or admissible from
83 original sources is not to be construed as immune from discovery or use in any
84 proceeding merely because it was presented during proceedings before any
85 committee or in the course of any investigation, nor is any member, employee or
86 agent of such committee or other person appearing before it to be prevented from
87 testifying as to matters within their personal knowledge and in accordance with
88 the other provisions of this section, but such witness cannot be questioned about

89 the testimony or other proceedings before any investigation or before any
90 committee;

91 (3) Nothing in this section shall limit authority otherwise provided by law
92 of a health care licensing board of the state of Missouri to obtain information by
93 subpoena or other authorized process from investigation committees or to require
94 disclosure of otherwise confidential information relating to matters and
95 investigations within the jurisdiction of such health care licensing boards;
96 provided, however, that such information, once obtained by such board and
97 associated persons, shall be governed in accordance with the provisions of this
98 subsection;

99 (4) Nothing in this section shall limit authority otherwise provided by law
100 in subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to
101 records by the entity or agency authorized to implement a system to protect and
102 advocate the rights of persons with developmental disabilities under the
103 provisions of 42 U.S.C. Sections 15042 to 15044 and the entity or agency
104 authorized to implement a system to protect and advocate the rights of persons
105 with mental illness under the provisions of 42 U.S.C. 10801. In addition, nothing
106 in this section shall serve to negate assurances that have been given by the
107 governor of Missouri to the U.S. Administration on Developmental Disabilities,
108 Office of Human Development Services, Department of Health and Human
109 Services concerning access to records by the agency designated as the protection
110 and advocacy system for the state of Missouri. However, such information, once
111 obtained by such entity or agency, shall be governed in accordance with the
112 provisions of this subsection.

113 4. Anyone who makes a report pursuant to this section or who testifies in
114 any administrative or judicial proceeding arising from the report shall be immune
115 from any civil liability for making such a report or for testifying unless such
116 person acted in bad faith or with malicious purpose.

117 5. Within five working days after a report required to be made pursuant
118 to this section is received, the person making the report shall be notified in
119 writing of its receipt and of the initiation of the investigation.

120 6. No person who directs or exercises any authority in a residential
121 facility, day program or specialized service shall evict, harass, dismiss or retaliate
122 against a patient, resident or client or employee because he or she or any member
123 of his or her family has made a report of any violation or suspected violation of
124 laws, ordinances or regulations applying to the facility which he or she has
125 reasonable cause to believe has been committed or has occurred.

126 7. Any person who is discharged as a result of an administrative
127 substantiation of allegations contained in a report of abuse or neglect may, after
128 exhausting administrative remedies as provided in chapter 36, RSMo, appeal such
129 decision to the circuit court of the county in which such person resides within
130 ninety days of such final administrative decision. The court may accept an
131 appeal up to twenty-four months after the party filing the appeal received notice
132 of the department's determination, upon a showing that:

133 (1) Good cause exists for the untimely commencement of the request for
134 the review;

135 (2) If the opportunity to appeal is not granted it will adversely affect the
136 party's opportunity for employment; and

137 (3) There is no other adequate remedy at law.

630.725. 1. The department shall revoke a license or deny an application
2 for a license in any case in which it finds a substantial failure to comply with the
3 standards established under its rules or the requirements established under
4 sections 630.705 to 630.760.

5 2. Any person aggrieved by the action of the department to deny or revoke
6 a license under the provisions of sections 630.705 to 630.760 may seek a
7 determination of the department director's decision by the administrative hearing
8 commission pursuant to the provisions of section 621.045, RSMo. It shall not be
9 a condition to such determination that the person aggrieved seek a
10 reconsideration, a rehearing or exhaust any other procedure within the
11 department.

12 3. The administrative hearing commission may stay the revocation of such
13 license, pending the commission's finding and determination in the cause, upon
14 such conditions as the commission deems necessary and appropriate including the
15 posting of bond or other security except that the commission shall not grant a
16 stay or if a stay has already been entered shall set aside its stay, if upon
17 application of the department the commission finds reason to believe that
18 continued operation of a residential facility or day program pending the
19 commission's final determination would present an imminent danger to the
20 health, safety or welfare of any resident or a substantial probability that death
21 or serious physical harm would result. In any case in which the department has
22 refused to issue a license, the commission shall have no authority to stay or to
23 require the issuance of a license pending final determination by the commission.

24 4. The administrative hearing commission shall make the final decision
25 as to the issuance or revocation of a license. Any person aggrieved by a final

26 decision of the administrative hearing commission, including the department,
27 may seek judicial review of such decision by filing a petition for review in the
28 court of appeals for the district in which the facility or program is
29 located. Review shall be had, except as modified herein, in accordance with the
30 provisions of sections 621.189 and 621.193, RSMo.

31 **5. The department of mental health shall notify the department**
32 **of health and senior services within ten days of revoking a license**
33 **under this section. If the department of health and senior services has**
34 **not already done so, the department of health and senior services shall**
35 **within thirty days of notification from the department of mental health,**
36 **initiate an investigation of the facility to determine whether licensure**
37 **action under sections 198.022 or 198.036, RSMo, is appropriate.**

630.755. 1. An action may be brought by the department, or by the
2 attorney general on his own volition or at the request of the department or any
3 other appropriate state agency, to temporarily or permanently enjoin or restrain
4 any violation of sections 630.705 to 630.760, to enjoin the acceptance of new
5 residents until substantial compliance with sections 630.705 to 630.760 is
6 achieved, or to enjoin any specific action or practice of the residential facility or
7 day program. Any action brought under the provisions of this section shall be
8 placed at the head of the docket by the court and the court shall hold a hearing
9 on any action brought under the provisions of this section no less than fifteen
10 days after the filing of the action.

11 2. Any facility or program which has received a notice of noncompliance
12 as provided by sections 630.745 to 630.750 is liable to the state for civil penalties
13 of up to [one hundred] **ten thousand** dollars for each day that noncompliance
14 continues after the notice of noncompliance is received. The attorney general
15 shall, upon the request of the department, bring an action in a circuit court of
16 competent jurisdiction to recover the civil penalty. The court shall have the
17 authority to determine the amount of civil penalty to be assessed **within the**
18 **limits set out in this section. Appeals may be taken from the judgment**
19 **of the circuit court as in other civil cases.**

20 **3. The imposition of any remedy provided for in sections 630.705**
21 **to 630.760 shall not bar the imposition of any other remedy.**

22 **4. Penalties collected for violations of this section shall be**
23 **transferred to the state schools moneys established under section**
24 **166.051, RSMo. Such penalties shall not be considered a charitable**
25 **contribution for tax purposes.**

26 **5. To recover any civil penalty, the moving party shall prove by**
27 **a preponderance of the evidence that the violation occurred.**

630.925. 1. The director of the department shall establish a
2 **mental health fatality review panel to review deaths of all adults in the**
3 **care and custody of the department. The panel shall be formed and**
4 **shall operate according to the rules, guidelines, and protocols provided**
5 **by the department of mental health.**

6 **2. The panel shall include, but shall not be limited to, the**
7 **following:**

- 8 **(1) A prosecuting or circuit attorney;**
9 **(2) A coroner or medical examiner;**
10 **(3) Law enforcement personnel;**
11 **(4) A representative from the departments of mental health,**
12 **social services, health and senior services, and public safety;**
13 **(5) A representative of the Missouri Protection and Advocacy.**

14 **3. The director of the department of mental health shall organize**
15 **the panel and shall call the first organizational meeting of the**
16 **panel. The panel shall elect a chairman who shall convene the panel to**
17 **meet at least quarterly to review all suspicious deaths of patients,**
18 **residents, or clients who are in the care and custody of the department**
19 **of mental health, which meet guidelines for review as set forth by the**
20 **department of mental health. In addition, the panel may review at its**
21 **own discretion any death reported to it by the medical examiner,**
22 **coroner, or a parent or legal representative of a client in the care and**
23 **custody of the department, even if it does not meet criteria for review**
24 **as set forth by the department. The panel shall issue a final report,**
25 **which shall be a public record, of each investigation to the department**
26 **of mental health. The final report shall include a completed summary**
27 **report form. The form shall be developed by the director of the**
28 **department of mental health. The department of mental health shall**
29 **analyze the mental health fatality review panel reports and periodically**
30 **prepare epidemiological reports which describe the incidence, causes,**
31 **location, and other factors. The department of mental health shall**
32 **make recommendations and develop programs to prevent patient,**
33 **resident, or client injuries and deaths.**

34 **4. For purposes of this section, "suspicious death" shall include**
35 **but not be limited to when the following occurs:**

- 36 (1) A crime is involved;
37 (2) An accident has occurred;
38 (3) A medical prognosis has not been ascertained; or
39 (4) A person has died unexpectedly.
40 5. The mental health fatality review panel shall enjoy such
41 official immunity as exists at common law.

630.927. 1. The director of the department of mental health shall
2 promulgate rules, guidelines, and protocols for the mental health
3 fatality review panel established pursuant to section 630.925.

4 2. The director shall promulgate guidelines and protocols for
5 coroner and medical examiners to use to help them to identify
6 suspicious deaths of patients, residents, or clients in the care and
7 custody of the department of mental health.

8 3. Any rule or portion of a rule, as that term is defined in section
9 536.010, RSMo, that is created under the authority delegated in this
10 section shall become effective only if it complies with and is subject to
11 all of the provisions of chapter 536, RSMo, and, if applicable, section
12 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
13 and if any of the powers vested with the general assembly pursuant to
14 chapter 536, RSMo, to review, to delay the effective date, or to
15 disapprove and annul a rule are subsequently held unconstitutional,
16 then the grant of rulemaking authority and any rule proposed or
17 adopted after August 28, 2007, shall be invalid and void.

18 4. All meetings conducted, all reports and records made and
19 maintained pursuant to sections 630.925 and 630.927 by the department
20 of mental health, or other appropriate persons, officials, or state mental
21 health fatality review panel shall be confidential and shall not be open
22 to the general public except for the annual report pursuant to section
23 630.925.

630.950. Any department employee or employee of a residential
2 facility, day program, or specialized service operated, funded, or
3 licensed by the department who reports on or discusses employee job
4 performance for the purposes of making employment decisions that
5 affect the safety of consumers and who does so in good faith and
6 without malice shall not be subject to an action for civil damages as a
7 result thereof, and no cause of action shall arise against him or her as
8 a result of his or her conduct pursuant to this section. The attorney

9 general shall defend such persons in any such action or proceeding.

630.975. 1. The director of the department of mental health shall
2 promulgate rules, guidelines and protocols for hospitals and physicians
3 to use to help them to identify suspicious deaths of patients, residents,
4 or clients in the care and custody of the department of mental health.

5 2. Any hospital, physician, medical professional, mental health
6 professional, or department of mental health facility shall disclose upon
7 request all records, medical or social, of any client in the care and
8 custody of the department of mental health who has died to the mental
9 health fatality review panel established under section 630.925 to
10 investigate the person's death. Any legally recognized privileged
11 communication, except that between attorney and client, shall not
12 apply to situations involving the death of a client in the care and
13 custody of the department of mental health.

✓

Bill

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